

REMARKS

Reconsideration of the present application is respectfully requested.

Summary of Office Action

Claims 1-4, 6, 8-19, 21-37, 39-49, 51, 52, 57-66 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,986,018 of O'Rourke et al. ("O'Rourke") in view of US Patent No. 6,134,588 of Guenther et al. ("Guenther").

Summary of Response

Applicant respectfully traverses all rejections. No claims have been amended, canceled, or added in this response. No new matter has been added.

Response to Rejections

Applicant respectfully traverses the rejections and maintains the arguments submitted in the response filed on July 28, 2008.

In addition, Applicant is submitting herewith a declaration under 37 C.F.R. § 1.131. The 1.131 declaration includes Exhibits A and B. The following table provides a correlation between Exhibit A and, for example, claim 1. The correlation table is for illustrative purposes only and is not intended to limit the scope of any of the claims.

Exhibit A (Examples only)	Claim 1
<ul style="list-style-type: none"> Figure illustrating overview of request resolution hierarchies, page 183 <ul style="list-style-type: none"> Netcache A is a caching device operating as an intermediary node on a network 	<p>A caching device to operate as an intermediary node on a network, the device comprising:</p>
<ul style="list-style-type: none"> Figure illustrating overview of request resolution hierarchies, page 183 <ul style="list-style-type: none"> Netcache A is a cache to store content 	<p>a cache to store content requestable by a client on the network;</p>
<ul style="list-style-type: none"> Table illustrating "adding or editing custom hierarchy rules," pages 234-236. 	<p>a user interface to enable a user to specify a set of forwarding rules for forwarding requests on the network;</p>
<ul style="list-style-type: none"> Figure illustrating overview of request resolution hierarchies, page 183 <ul style="list-style-type: none"> Netcache A stores hierarchy rules 	<p>a database to store the set of forwarding rules;</p>
<ul style="list-style-type: none"> Figure illustrating overview of request resolution hierarchies, page 183 <ul style="list-style-type: none"> Netcache A receives and processes requests from client 	<p>a request processing unit to receive a request from the client;</p>
<ul style="list-style-type: none"> Figure illustrating overview of request resolution hierarchies, page 183 <ul style="list-style-type: none"> If Netcache A cannot resolve requests, hierarchy rules indicate what to do next Hierarchy rules on Netcache A indicate where send request to (e.g., "send to host," "send direct") Step 2, page 187 "Earth (the child)," page 213 Rules definition, page 217 	<p>a rule evaluator to evaluate the set of forwarding rules to identify within the set of forwarding rules a rule which applies to the request, such that the request processing unit attempts to forward the request to a destination selected according to said rule, wherein the rule indicates a host in a defined forwarding hierarchy; and</p>

<ul style="list-style-type: none"> • Figure illustrating overview of request resolution hierarchies, page 183 <ul style="list-style-type: none"> ◦ Netcache A • Table indicating "planning for hierarchies with multiple members," page 211 <ul style="list-style-type: none"> ◦ Load balancing (for a load balancing group) • Benefits of using clusters, page 211 <ul style="list-style-type: none"> ◦ Load balancing • Figure illustrating hierarchies with multiple members, load balancing details, page 213 • "About Hierarchy forwarding rules," page 217 • "Elements in a hierarchy rule," page 221-222 • "Execution order of rules," page 222 	<p>a rule engine to determine an availability of the host indicated in said rule and, if the host is available, to select the host as a forwarding destination and to cause the request processing unit to forward the request to the host according to said rule, wherein the host is determined to be available if the host responds to a connection attempt within a timeout period and, if more than one host is available as indicated by said rule, to select the host based on a delivery factor included in said rule, and wherein, if the request processor is unable to forward the request according to said rule, the rule evaluator resumes evaluating the set of forwarding rules to identify another rule corresponding to the request.</p>
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Based on the exemplary correlation table above, the Applicant respectfully submits that Exhibit A, which is dated prior to June 26, 2001, shows **conception** of the claimed invention **before the effective date of the O'Rourke reference**. Furthermore, Exhibit A, which is an administration guide for a product named "NetCache Appliance 5.0," provides evidence that the claimed invention was implemented in the NetCache Appliance 5.0 product ("Product").

Additionally, Exhibit B provides a listing of release dates of various products released by NetApp, Inc.¹ In its unredacted form, Exhibit B indicates that the Product was released for "[e]arly access" prior to June 26, 2001 (See Exhibit B, page 13 of 16),

¹ NetApp, Inc. is the assignee of the present invention

meaning that the Product, with the present invention included, was operational and was released to end-users for testing and evaluation (under NDA prior to general release of the product) prior to June 26, 2001. Exhibit B thus provides evidence of **actual reduction to practice** of the claimed invention **before the effective date of the O'Rourke reference**.

Because the claimed invention was conceived and reduced to practice prior to the effective date of the O'Rourke reference, Applicant respectfully submits that **O'Rourke is not effective as prior art**. Therefore, Applicant respectfully submits that all rejections based on O'Rourke should be withdrawn.

Discussion of § 103 Rejections

Independent claims 1, 15, 26, 32, 34, 37, 49, and 58:

Claims 1, 15, 23, 26, 32, 34, 37, 49, and 58 provide in relevant part, **"if more than one host is available as indicated by said rule, the host is selected based on a delivery factor included in said rule"** (emphasis added).

The cited references, either individually or in combination, do not disclose or even suggest such that the destination or host should be selected based on any delivery factors. Although Applicant's arguments shall be directed to the alleged combination of references, it is necessary to first consider their individual disclosures, in order to ascertain what combination, if any, could be made from them.

O'Rourke does not teach or suggest at all that the destination or host should be selected based on any delivery factors. Specifically, **O'Rourke does not teach what needs to be done if there is more than one available destination** to which a client's

request for content can be forwarded. O'Rourke provides that the "cache policies dictate that the client be redirected to a different server," and that "[t]he server to which the client is redirected may be another cache server or an origin server" (col. 6, line 66 – col 7, line 5). Further, O'Rourke provides that "[t]he [cache] policy may cause the client to wait while the cache server downloads ... requested content, the client may be redirected to a different cache server, or the client may be redirected to the origin server to retrieve the requested content" (col. 8, lines 5-23). Thus, **O'Rourke teaches merely that the cache policies cause the client to be redirected to a different cache server, and does not at all suggest or teach what happens if more than one cache server is available.** Specifically, O'Rourke does not provide any teaching to indicate how one cache server should be selected over another available cache server or whether the client request should be distributed between available cache servers, etc.

Therefore, Applicant respectfully submits that O'Rourke does not disclose or teach how the host is selected based on a delivery factor when more than one host is available as indicated by the forwarding rule, as recited in the independent claims 1, 15, 23, 26, 32, 37, 49, and 58.

Even assuming *arguendo* that the above features are disclosed by O'Rourke, the Applicant respectfully submits that **O'Rourke is not effective as prior art**, as shown by the 1.131 declaration submitted concurrently herewith.

Likewise, Guenther does not disclose or suggest any of the above limitations. Guenther is related to implementing policies for a web browser to "enhance access to web servers that host content requested by the browser" (Abstract, lines 1-4). However, Guenther does not disclose or teach at all how the host is selected based on a delivery

factor when more than one host is available as indicated by the forwarding rule, as recited in the independent claims 1, 15, 23, 26, 32, 37, 49, and 58.

As such, the cited combination does not include all of the limitations of the claimed invention, and therefore, cannot render the claimed invention obvious. Therefore, Applicant respectfully requests the Examiner to find that independent claims 1, 15, 26, 32, 34, 37, 49, and 48, and all claims dependent on the independent claims are thought to be patentable over the cited art.

Applicant has not necessarily discussed here every reason why every pending independent claim is patentable over the cited art; nonetheless, Applicant is not waiving any argument regarding any such reason or reasons. Applicant reserves the right to raise any such additional argument(s) during the future prosecution of this application, if Applicant deems it necessary or appropriate to do so.

Dependent Claims

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicant's silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

CONCLUSION

In light of the amendments and the preceding arguments, the applicant respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance.

If the Examiner believes that a conference would be of value in expediting the prosecution of this application, he is cordially invited to telephone the undersigned counsel at (650) 838-4300 to arrange for such a conference.

For any required fees, please charge our Deposit Account No. 50-2207, under Order No. 67272-8049.US01 from which the undersigned is authorized to draw.

Dated: 1/28/09

Respectfully submitted,

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